IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 632 OF 2005

Chandrakant Keshav Vyaghra vs. NIT through Chairman & Anr.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
AUGUST 04, 2007.

Heard Shri S.D. Deshpande, learned counsel for the appellant – original plaintiff.

The plaintiff is challenging the notice issued by the respondents on 18.3.1993 for removal of unauthorised structure by filing Civil Suit No.687 of 1993 on the ground that as building plan submitted by him was not rejected within 60 days, the same is deemed to have been sanctioned.

Shri Deshpande, learned counsel contends that after such deemed sanction, the construction has been effected in accordance with said plan and trial Court after appreciation of evidence has decreed the suit. He contends that the appellate Court has erroneously found that there is construction in side margins or in rear margins. He further contends that

issuance of said notice for maintenance of such suit has been erroneously said to be mandatory.

I have perused the judgment of the trial Court. The trial Court has not recorded a finding that construction effected by present appellant is in accordance with the provisions of building bye-laws. It has merely gone by the fact that the building plan submitted by present appellant was not rejected or sanctioned by the respondents and therefore it has been deemed to have been sanctioned and construction made in accordance with the said plan is also deemed to have been sanctioned. The appellate Court has rightly considered the matter and it has found that there is construction made in side margins and rear margins and therefore that construction cannot be sanctioned. This discussion clearly shows that such construction could not have been sanctioned even by the respondents and as such there is no question of any deeming provision in relation to sanction thereto to be invoked. The trial Court has erroneously applied the provision of deemed sanction in these circumstances.

The arguments of Shri Deshpande, learned counsel by placing reliance upon said deemed sanction are, therefore, totally misconceived. The plan cannot be deemed to have been sanctioned insofar as such construction in rear margin or side margins is concerned. The notice dated 18.3.1993 has been therefore, held to be legal and valid by the appellate Court. Similarly, in view of this finding, the appellate Court has held that the notice as contemplated under Section 115 of Nagpur Improvement Trust Act, ought to have been issued.

I do not find any perversity in any of these findings and in the approach of the appellate Court. No substantial question of law arises in this Second Appeal. The same is dismissed. No order as to costs.

JUDGE

*GS.